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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,779	12/14/2001	Scott R. Swix	01377	9532

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AT&T Legal Department - SZ
Attn: Patent Docketing
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EXAMINER	
VAN BRAMER, JOHN W	

ART UNIT	PAPER NUMBER
3622	

MAIL DATE	DELIVERY MODE
12/08/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/020,779	SWIX ET AL.	
	Examiner	Art Unit	
	JOHN VAN BRAMER	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 September 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6,8 and 17-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6, 8, and 17-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *091010*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendment filed on April 16, 2010 cancelled no claims. Amendments were made to claims 1, 6, and 17-19 and new claim 21 was added. Thus, the currently pending claims addressed in this Office Action are 1, 3-6, 8, and 17-21.

Claim Rejections - 35 USC § 112

2. The amendment filed September 28, 2010 has failed to overcome the first paragraph of 35 U.S.C. 112 rejection raised in the Office Action dated June 28, 2010. Thus the rejection is maintained. According to the applicants specification there is no disclosure of webpage itself is not being sent and received. Instead the advertiser is accessing an interactive server and using web-based forms to communicating with the invention. Thus, the examiner would accept a limitation that indicates that the advertiser accesses an interactive server and input requests and receives responses via web-based forms. However, the current claims indicate that the server initiates the communication and actually sends a webpage to an advertiser that notifies them of future advertisement timeslot. The applicant's specification does not indicate that the application server is able to initiate such an action instead a web-based form is displayed to an advertiser once the advertiser request the form to be displayed. The creation of a web-page, storage of a web-page and transmittal of a web-page that is

initiated by the interactive server is not disclosed in the applicant's specification. Thus the rejection is maintained.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-6, 8, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al (U.S. Patent Number: 6,463,585). In view of Reuning et al. (PGPUB: US 2002/0087573)

Claims 1, 17 and 21: Hendricks discloses an advertisement management method and system, comprising:

a. Receiving programming content delivered as a scheduled lineup having an advertisement inserted into a future advertisement time slot, the programming content scheduled to be broadcast in the future from a network provider's server to a subscriber's equipment (Fig. 13, and Col 10, line 61 through Col 11, line 25)

b. Notifying the advertisers of a future advertisement time slot in the scheduled lineup. (Fig. 13, Col 10, line 61 through Col 11, line 25; Col 28,

lines 32-45; Col 30, line 65 through Col 31, line 6; and Col 35, line 52 through Col 36, line 3)

c. Receiving advertisements from the advertisers and storing the advertisements in the memory of the server. (Fig. 13, Col 10, line 61 through Col 11, line 25; Col 28, lines 32-45; Col 30, line 65 through Col 31, line 6; and Col 35, line 52 through Col 36, line 3)

d. Categorizing, the advertisements by the server as overrideable or non-overrideable, the overrideable categorization allowing the advertisement to be replaced with a different advertisement, and the non-overrideable categorization not allowing replacement of the advertisement in the scheduled lineup, such that the advertisement is displayed at the subscriber's equipment. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; and Col 34, lines 22-38)

e. Receiving, an advertiser's request to replace the advertisement with a different advertisement and an indication of financial premium that the advertiser will pay to replace the advertisement with the different advertisement. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; Col 34, lines 22-38 and Col 71, lines 11-29))

f. Determining whether the advertisement is categorized as at least one of overridable and non-overridable. (Fig 29; Col 33, lines 18-42; and Col 67, lines 45-52)

g. Determining whether the advertisement and the different advertisement are equal in time length. (Fig 29; Col 33, lines 18-42; and Col 67, lines 45-52)

h. Determining, that the different advertisement has been recorded in a compatible format with the scheduled lineup. (Fig 29; Col 33, lines 18-42; Col 67, lines 45-52, Col 48, lines 54-63; and Col 51, lines 49-64)

i. Searching, to determine a time of broadcast of a previous advertisement relating to a same type of product as the different advertisement (Col 33, lines 18-42, Col 34, lines 22-38; Col 37, line 13 through Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49)

j. Accepting the financial premium from the advertiser when the advertisement is categorized as overrideable, declining the financial premium from the advertiser when the advertisement is categorized as non-overrideable. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; Col 34, lines 22-38 and Col 71, lines 11-29))

k. Replacing the advertisement in the scheduled lineup with the different advertisement when the advertisement is categorized as overrideable and when the advertisement and the different advertisement are equal in time length, such that the different advertisement is inserted into the programming content, declining to replace the advertisement in the scheduled lineup with the different advertisement when the advertisement is categorized as non-overridable. (Col 33, lines 18-42, Col 34, lines 22-

38; Col 37, line 13 through Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49).

h. Broadcasting the programming content to the subscriber's equipment with the advertisement or the different advertisement in the scheduled lineup. (Col 4, lines 25-67; and Col 34, lines 22-38)

While Hendricks does not specifically state that advertisements for the same type of product are not broadcast within 2 hours of each other, he does disclose tracking the advertisements that are watched and adjusting the weighting of the advertisement or advertisement group based upon this factor (Col 33, lines 18-42, Col 34, lines 22-38; Col 37, line 13 through Col 39, line 65; Col 67, lines 53-62; and Col 70, line 29 through Col 71, line 49). Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to utilize a time frame associated with this weighting factor. One of ordinary skill in the art at the time the invention was made would understand that programs typically run in predictable lengths of time such as 30 minutes, 60 minutes and two hours. The rational for including a two hour time frame for the weighting factor is that there are a limited number of predictable program lengths from which commercial insertion occurs for a single program within a given program schedule.

While Hendricks discloses that the advertiser and the operation center communicate with one another to determine which advertisements an advertiser desires to submit for future insertion into a scheduled programming lineup, it is not specifically disclosed that the operation center sends a webpage to the

advertiser and that the operation center receives a webpage from and advertiser. However the analogous art of Reuning discloses in Paragraphs [0485], [0509]-[0510], and [0518]-[0521] that it is known for an advertiser to receive a webpage which allows it to submit advertisements to another entity and that the other entity receives web pages indicating the advertisements and the targeting criteria the advertiser desires to utilize. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made for the communication between the advertiser and the operation center of Hendricks to occur via the sending and receiving of web pages. The rational for communicating in this manner is that there are a limited number of predictable method in which the advertiser and the operation center can communicate and the sending and receiving of web pages is one such predictable communication method.

Claims 18: Hendricks and Reuning discloses the system of claims 17, wherein the interactive server precategories the advertisement time slot as overrideable or non-overrideable. (Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; and Col 34, lines 22-38)

Claims 3 and 19: Hendricks and Reuning discloses the method and system of claims 1, and 17 respectively, further comprising a pricing scheme stored in the database that prices the overrideable advertisement time slot at a lower cost than

the non-overrideable advertisement time slot. (Col 11, line 55 through Col 12, line 9; Col 34, lines 22-44; and Col 70, lines 31 through Col 71, line 49)

Claims 4 and 20: Hendricks and Reuning discloses the method and system of claims 1 and 17 respectively, further comprising providing data regarding viewing habits that distinguishes more-valuable viewers from less-valuable viewers. (Fig 29; and Col 70, lines 31 through Col 71, line 49)

Claim 5: Hendricks and Reuning discloses the method of claims 4 and 13 respectively, further comprising matching advertisements with the more-valuable viewers and with the less-valuable viewers. (Fig 29; and Col 70, lines 31 through Col 71, line 49)

Claim 6: Hendricks and Reuning discloses the method of claims 1, further comprising wherein at least one of: broadcasting the programming content as a television broadcast, broadcasting the programming content as a radio broadcast, and broadcasting the programming content over a network. (Col 4, lines 25-67)

Claim 8: Hendricks and Reuning discloses the method of claim 1, further comprising creating a log of events viewed by potential customers. (Col 45, lines 20-46; and Col 47, lines 46-60)

Response to Arguments

5. Applicant's arguments filed September 28, 2010 have been fully considered but they are not persuasive.

a. The applicant argues that Hendricks and Reuning fail to teach non-overridable advertisements where the non-overrideable categorization does not allow replacement of the advertising in the scheduled lineup such that the advertisement is displayed at the subscribers equipment. However this limitation is disclosed in Hendricks in Fig 13; Col 11, line 55 through Col 12, line 30; Col 33, lines 18-42; and Col 34, lines 22-38. Notice in Col 33 lines 18-42 that local advertisements can only override certain targeted advertisement other can not be overriden thus the claimed categorization is occurring.

b. The applicant argues that Hendricks and Reuining do not disclose inserting the advertisement into the programming content because Hendricks and Reuining are switching to feeder channels to effectuate the advertisement replacement. However, Col 33, lines 18-42; and Col 34, lines 22-38 of Hendricks disclose that the switching can occur at either the cable headend or the set top box. Thus, when the switching occurs at the cable headend, the advertisement is inserted into the programming content delivered to the set top box and meets the limitations of the claims as currently written.\

c. The applicant asserts that Hendricks fails to realize that some advertisement that are non-overridable are not replaced even though a financial premium is offered. However, Hendricks discloses in Col 11, line 55 through Col

12, line 30 that prices for the advertisements are provided and selected and Col 33 lines 18-42 indicates that some advertisement can not be overridden. Thus Hendricks does realize that some advertisement are not able to be replaced even though a financial premium is offered.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John Van Bramer/
John Van Bramer
Primary Examiner, Art Unit 3622